

OCT 07 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

MELVIN MARIN,

Defendant - Appellant.

No. 03-10188

D.C. No. CR-02-00479-LDG

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Lloyd D. George, District Judge, Presiding

Submitted September 12, 2003**

Before: SKOPIL, FERGUSON, and BOOCHEVER, Circuit Judges.

Melvin Marin appeals from his 24-month sentence for making a false statement and fraudulently attempting to obtain citizenship, in violation of 18

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

U.S.C. §§ 1001 and 1425(a). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Marin argues that the district court erred in calculating his criminal history, by mistakenly counting a misdemeanor battery offense as a felony drug possession offense. Because he did not raise this issue in the district court, we review for plain error. Jones v. United States, 527 U.S. 373, 388 (1999). The district court did not commit error. Paragraph 33 of the presentence report describes Marin's conviction for felony drug possession after his initial guilty plea to misdemeanor battery was voided.

AFFIRMED.